



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2021-0532; FRL-8836-01-OW]

Notification of Safe Drinking Water Act (SDWA) Section 1441 Application Submissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing receipt of Certifications of Need applications pursuant to the Safe Drinking Water Act (SDWA) Section 1441. Seven public water systems and three publicly owned treatment works submitted these applications. Each applicant cited receipt of notices of *force majeure* or unavailability of treatment chemical via normal procurement channels. The notices explained that a significant curtailment of deliveries of chlorine and derivative treatment chemicals from producers and from producers to repackagers would necessitate either a reduction in allocations of chlorine, sodium hypochlorite, or ferric chloride relative to the contractual agreements or an outright cancellation of the contracts. The applications further stated that after receiving the notices, each of these utilities tried to identify alternate treatment chemical suppliers with no success. EPA is providing an opportunity for written comments from the public on the SDWA Section 1441 applications, from chemical producers and repackagers that could supply the required chlorine, sodium hypochlorite, or ferric chloride to the applicants, and from any other interested parties.

DATES: Comments must be received on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by Docket ID Number EPA-HQ-OW-2021-0532, by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.

Mail: U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Environmental Protection Agency, Mail code: 28221T, 1200 Pennsylvania Ave. NW, Washington, D.C. 20460.

Hand Delivery / Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, D.C. 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OW-2018-0532 for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be delay in processing mail. Hand deliveries and couriers may be received by scheduled appointment only. For further information of EPA Docket Center Services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For information on SDWA Section 1441 applications contact Gabrielle Minton, Office of Ground Water and Drinking Water, Water Security Division, at (202) 564-8284 or e-mail minton.gabrielle@epa.gov. For information on water utility disinfection products contact Steve Allgeier, Office of Ground Water and Drinking Water, Water Security Division, at (569) 513-7131 or email allgeier.steve@epa.gov. For more information, visit EPA's website at:

<https://www.epa.gov/waterutilityresponse/watersectorsupplychainchemicalshortages>.

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I. General Information

- A. Does this Action Impose Any Requirements on Public Water Systems (PWSs) or Publicly Owned Treatment Works (POTWs)?*

This action, when published, will not impose any requirements on utilities.

- B. Public Participation*

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2021-0532, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the ADDRESSES section of this document. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center Staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

Explain your views as clearly as possible.

Describe any assumptions that you used.

Provide any technical information and/or data you used that support your views.

Provide full references for any peer reviewed publication you used that support your views.

Provide specific examples to illustrate your concerns.

Offer alternatives.

Make sure to submit your comments by the comment period deadline. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and *Federal Register* citation related to your comments.

II. Purpose, Background, and Statutory Requirements of this Action

This section briefly summarizes the purpose of this action and the statutory requirements.

A. What is the Purpose of this Action?

The purpose of this action is to provide notification of the applications received under SDWA Section 1441.

EPA has received applications for Certifications of Need under SDWA Section 1441 authority, from the following public water systems and publicly owned treatment works: City of Oceanside – Mission Basin Groundwater Purification Facility (PWSID CA3710014, 12.5% sodium hypochlorite, 5,000 gallons delivered every 65 days); City of Oceanside – Weese Filtration Plant (PWSID CA3710014, 12.5% sodium hypochlorite, 5,000 gallons delivered every 5 days); City of Oceanside – San Luis Rey Water Reclamation Facility (POTW ID R9-2019-0166, 12.5% sodium hypochlorite, 5,000 gallons delivered every 10 days); Western Municipal Water District - Western Water Recycling Facility (POTW ID R9-2003-0113, 12.5% sodium hypochlorite, 5,000 gallons delivered every 10 days); Western Municipal Water District - Western Riverside County Regional Wastewater Authority (POTW CA8000216, 12.5% sodium hypochlorite, 5,000 gallons delivered every 3 days); City of Poway (PWSID CA3710015, 100% gaseous chlorine, 5 tons delivered every 21 days); Jordan Valley River Water Conservancy District (PWSID UT18027, 100% gaseous chlorine, 12 tons delivered every 7 days); Helix Water District (PWSID CA3710010, 100% gaseous chlorine, 12 tons delivered every 14 days); Niagara Falls Water Board Wastewater Treatment Plant (PWSID NY0026336, 12.5% sodium hypochlorite, 30,000 gallons delivered every day); and the City of Farmington Water and Wastewater Utility (PWSID NM-35-10224, 38%-42% ferric chloride, 5,000 gallons delivered every 55 days).

Submitted applications were reviewed by EPA for accuracy, completeness, and basis for need. After the comment period, EPA will issue or deny Certifications of Need. If issued, EPA will transmit the Certifications of Need to the U.S. Department of Commerce Undersecretary for Business and Industrial Security to implement the certification by issuing an order to contracted suppliers. The orders will require repackagers and/or suppliers to provide the fully contracted chlorine and other derivative treatment chemical allocations to the utilities listed in this *Federal*

Register document. EPA requests comment on the application submittals as well as feedback from repackagers or suppliers who may be able to assist.

On June 30, 2021, EPA Administrator Regan issued a letter to the chemical sector encouraging chemical manufacturers and suppliers to prioritize drinking water and wastewater systems. EPA has been in frequent communication with representatives from the chemical sector, including specific chlorine producers and chlorine repackagers. While drinking water and wastewater disinfection accounts for less than 5% of chlorine consumed in the U.S., the water sector's use of this chemical is essential for protecting public health.

The applicants indicated that if their public water systems cannot obtain a sufficient and reliable supply of the required treatment chemical in the form used at that treatment facility, they would be compelled to issue boil water notices and Tier 1 public notifications or shut down the treatment system until the supply of the required treatment chemical is restored. If public water systems are forced to shut down, the communities served by the system would lack a safe drinking water supply, with significant consequences to public health and the local economy. Similarly, if publicly owned treatment works lack adequate chlorine or derivative chemical supplies, they would be unable to disinfect treated wastewater prior to discharge to surface waters, potentially leading to an increase in the concentration of pathogens in the surface water, which may be used by downstream drinking water utilities as a source of drinking water or by recreational users.

B. Background and Statutory Requirements

Pursuant to SDWA Section 1441, a PWS or POTW may submit an application to the EPA Administrator for a Certification of Need when the amount of a "chemical or substance necessary to effectively treat water is not reasonably available" or "will not be so available when required." 42 U.S.C. 300j(a). Upon receipt of the application, EPA must publish a notice in the *Federal Register*, notify in writing all individuals who could be subject to an order based on the Certification of Need, and provide time for written comment. EPA may waive such requirements

when the agency finds for good cause that a waiver is necessary to protect public health. *Id.* at (b)(2). Within 30 days after publishing the notice in the *Federal Register* or after receipt of the application if publication is waived, EPA will either issue or deny the Certification of Need. *Id.* at (b)(3). The EPA Administrator has delegated the authority to receive applications for Certifications of Need, issue such certifications, and take other actions under SDWA Section 1441 to the EPA Assistant Administrator for Water.

If EPA issues the Certification of Need, the agency will forward it to the U.S. Department of Commerce (Department) for implementation. 42 U.S.C. 300j(c)(1). Within seven days of EPA issuing the certification, the Department will issue an order requiring the manufacturers, producers, processors, distributors, or repackagers of the chemical or substance, identified in the amount and form in the Certification of Need, that the Department determines the supplies to be necessary and appropriate. *Id.* Persons or companies subject to the order will be given a reasonable opportunity to consult with the Department with respect to implementation of the order. *Id.*

Radhika Fox,

Assistant Administrator.

[FR Doc. 2021-17358 Filed: 8/12/2021 8:45 am; Publication Date: 8/13/2021]